

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENERGY)
CORP. FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY FOR THE)
CONSTRUCTION OF A HIGH-SPEED FIBER)
NETWORK AND FOR APPROVAL OF THE)
LEASING OF THE NETWORK'S EXCESS)
CAPACITY TO AN AFFILIATE TO BE ENGAGED)
IN THE PROVISION OF BROADBAND SERVICE)
TO UNSERVED AND UNDERSERVED)
HOUSEHOLDS AND BUSINESSES OF THE)
COMMONWEALTH)

CASE NO.
2021-00365

ORDER

On September 21, 2021, Kenergy Corp. (Kenergy) filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for five years for a portion of the testimony of Jeff Hohn, Attachment 2 to Mr. Hohn's testimony, and the answers to questions 6 and 9 of Travis Siewert's testimony. On October 7, 2021, Kenergy filed a petition, requesting that the Commission grant confidential treatment for one year for the answer to question 10 in Jonathan Chambers' testimony. On December 2, 2021, Kenergy filed a petition requesting the Commission grant confidential treatment for five years for the responses to Attorney General's First Request for Information (Attorney General's First Request) Items 7, 15, and 19. On December 3, 2021, Kenergy filed a petition requesting the Commission grant confidential treatment for five years for the response to Item 15 from Commission Staff's First Request for Information (Staff's First Request).

The information contained in the September 21, 2021 petition is the testimony of Mr. Hohn, the testimony of Mr. Siewert, and the attachment to Mr. Hohn's testimony. These documents reference the negotiations between Kenergy and Conexon regarding the pricing of the Fiber to Home business plan. The request contained in the October 7, 2021 petition is information regarding Rural Development Opportunity Funds from Jonathan Chambers' testimony. The testimony references other bids Conexon received from entities that received the funding.

The December 2, 2021 petition requested confidential treatment for the response to Attorney General's First Request, Item 7, which is the cost estimates for the fiber optic cable. Also requested in the petition, was confidential treatment of the response to Attorney General's First Request, Item 15, which is the expected rate of return for the project. Finally, the December 2, 2021 petition requested confidential treatment for the response to Attorney General's First Request, Item 19 which required Kenergy to detail the process Conexon went through to select a subcontractor.

The December 3, 2021 petition requested confidential protection for an attachment filed as part of the response to Staff's First Request, Item 15. The attachment contains Conexon's market analysis to determine rates.

KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure for records that are "generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records." Kenergy requested confidential treatment of the information in all the petitions under KRS 61.878(1)(c)(1). Kenergy argued that the information for which it requested confidential treatment relates to the Fiber to Home business plan that

Kenergy has retained Conexon to provide, and that this information is confidential and proprietary. Conexon requested that the information be kept confidential when creating the business plan for Kenergy. Kenergy argued that consultants would not be willing to consult with Kenergy if the information they deem confidential and proprietary were to be publicly disclosed. This would grant Kenergy's competitors an unfair commercial advantage by reducing the pool of consultants willing to consult with Kenergy.

Having considered the petition and the material at issue, the Commission finds that the documents for which confidential treatment is sought are generally recognized as confidential and proprietary; the documents therefore meet the criteria for confidential treatment and are exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Kenergy's September 21, 2021, October 7, 2021, December 2, 2021, and December 3, 2021 petitions for confidential treatment are granted.
2. The designated material granted confidential treatment by this Order in the October 7, 2021 petition shall not be placed in the public record or made available for public inspection for one year or until further Order of this Commission.
3. The designated material granted confidential treatment by this Order in the September 21, 2021, December 2, 2021, and December 3, 2021 petitions shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.
4. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

5. Kenergy shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.

6. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, Kenergy shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If Kenergy is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

7. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Kenergy to seek a remedy afforded by law.

By the Commission

ENTERED
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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Nancy Vinsel for
Executive Director

Case No. 2021-00365

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